

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

-----x Chapter 11
In re:
SEARS HOLDINGS CORPORATION, et al.
Debtors
(Jointly Administered)
Case No. 18-23538 (RDD)

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**SUPPLEMENTAL OBJECTION TO CURE AND ADEQUATE ASSURANCE
INFORMATION BY DART WAREHOUSE CORPORATION RE NAPERVILLE, IL.
SUB-LEASE (List No. 8262, Lease Nos. 862200 AND 862250) AND NAPERVILLE
MASTER SERVICES AGREEMENT AND STATEMENT OF WORK (List No. 1967,
Contract No. CW2288705 AND No. 1964, Contract No. CW2330726) (SUPPLEMENTING
JANUARY 29, 2019 OBJECTIONS DKT. 2165 AND DKT. 2167 AND 2168)**

DART Warehouse Corporation (“DART”), by its undersigned counsel, submits this supplemental objection in response to the April 19, 2019 “Notice of Assumption and Assignment of Additional Designatable Lease” (“Assumption Notice”) (Dkt. 3298) filed by Transform Holdco LLC (“Holdco”). As discussed below, DART previously objected in January 2019 with respect to the proposed cures on the unexpired leases in Naperville, Il. (Dkt. 2168) and the proposed cures regarding the executory services contracts in Naperville, Il. (Dkt. 2167 and 2165). The instant filing is therefore supplemental and informational and does not effect DART’s preservation of its objections through the January 2019 filings.

The Unexpired Sub-Leases

Dedeaux Enterprises, LLC owns the warehouse located at 1835 Ferry Road, Naperville, Il. 60563 (“the Naperville Warehouse”) and leases it to DART. DART, in turn, sub-leases the Naperville Warehouse to debtor Innovel Solutions, Inc. (“Innovel” or “Sears” or “the Debtor”)

under a March 24, 2011 sublease; DART also re-lets a smaller portion of the Naperville Warehouse back from Innovel under a Memorandum of Sub-Lease dated March 24, 2011 (DART will refer to the Sub-Lease and the re-let lease collectively as “the Naperville Leases”). The Naperville Leases are unexpired with terms running through December 31, 2020.

Holdco’s Assumption Notice lists two DART leases at Naperville: First, a “lease” for a 721,500 ft² location, identified as item 470, store (*sic*) number 8262 and ID number 826200. And second, an “Open Store (Sub-Lease)” (no square footage is given), identified as item 471, store number 8262 and ID number 826250. See Dkt. 3298, p. 11. DART assumes these Innovel references to be to the two Naperville Leases identified above.

The Other Executory Contracts at the Naperville Location

DART operates the Naperville Warehouse as a fulfillment center for Sears under two connected executory service contracts, a Master Services Agreement (“MSA”) and a Statement of Work (“SOW”), both dated May 1, 2011 (collectively, “the Naperville MSA and SOW”). As amended and extended, the Naperville MSA and SOW run until December 31, 2020 (i.e., these are co-extensive with the terms of the Naperville Leases).

Innovel is in default in the amount of \$320,000 on the Naperville MSA and SOW, as detailed in DART’s April 10, 2019 proof of claim (POC 18168). It is DART’s understanding from Holdco’s April 12, 2019 Notice of Assumption and Assignment of Additional Contracts (Dkt. 3172, p.11) that it intends to assume the Naperville MSA and SOW.

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DART Already Objected to the Proposed Cures of the Naperville Leases and the Naperville MSA and SOW in January 2019

Sears' January 24, 2019 Supplemental Notice of Cure Costs and Potential Assumption (see Dkt. 1774, p.54) identified only one Naperville lease and DART objected on January 29, 2019 (see Dkt. 2168) to the possible lease assumption on grounds of lack of assurance as to future payments.

Sears' January 18, 2019 Notice of Cure Costs and Potential Assumption and Assignment identified the Naperville MSA and the SOW (Dkt. 1731, pp. 89-90) and DART objected on January 29, 2019 as to both the MSA and SOW on the grounds the Debtors had listed no proposed cure amounts and there was no assurance as to future performance (Dkt. 2165 and 2167).

Conclusion: DART Requests a Hearing on the Cure Issues Regarding the Naperville Leases and the Naperville MSA and SOW

Paragraph 19 of Holdco's Notice of Assumption (Dkt. 3298), states if the cure dispute between Holdco and the counterparty cannot be negotiated to settlement, the counterparty is entitled to a hearing before the Bankruptcy Court on its objection. To date, neither the Debtors nor Holdco have contacted DART with any proposals regarding assumption of the Naperville Leases or the Naperville MSA and SOW.

On May 1, 2019 Holdco filed a Notice of Hearing on Assumption and Assignment and Cure Notices of Transform Holdco LLC (Dkt 3461), which sets for hearing on May 8, 2019 the cure issues on the above referenced unexpired nonresidential leases and executory contracts. Consistent with that Notice undersigned counsel has contacted Holdco's counsel by telephone as directed in the Notice and by email and requested adjournment of this creditor from that May 8th

hearing. Adjournment from the May hearing is requested so that Holdco and the clients of undersigned counsel have an opportunity to continue to discuss and potentially resolve cure issues as herein discussed.

THEREFORE, DART prays for the following relief:

1. For an order setting a hearing on its objections to Holdco's proposed assumption of the Naperville Leases and the Naperville MSA and SOW; and
2. For such other and further relief as the court deems just and proper.

Dated: May 2, 2019
San Diego, CA

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